IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REV.APPLICATION NO. 418 OF 2004

Shri Khushalchandra Ashok Rasal .. Applicant.

V/s.

State of Maharashtra .. Respondent.

Shri Mahadeo A. Chaudhari for the Applicant.
Shri V.B. Konde Deshmukh, APP for Respondent

CORAM : A.M.KHANWILKAR, J.
DATED : 04.11.2004

PC :-

. Heard counsel for the parties.

2. Rule. Rule made returnable forthwith. Shri Konde Deshmukh, APP waives notice for Respondent. As short question is involved, the petition taken up for final disopsal forwith by consent.

3. The petitioner/applicant has been tried for offence punishable under section 509 of IPC. It is not necessary to burden this judgment with the prosecution case as I am not inclined to interefere with the concurrent findings of fact recorded by the two courts below, holding the applicant is guilty of

the alleged offence. The only argument that is canvassed before me is on the point of sentence. The trial court has sentenced the petitioner/applicant to suffer simple imprisonment of six months and also to pay fine of Rs. 1500/-, indefault to suffer simple improsonemnt for one month.

4. The learned counsel for the applicant states that the applicant has already deposited fine of Rs. 1500/-, which position is accepted by the learned APP. It is further submitted that the applicant is of 32 years of age and is the only earning member of his family. He has no father. Besides the counsel for the applicant, on instruction, submits that the applicant is willing to compensate the victim by offering to pay a sum of Rs. 5,000/-. The learned APP on the other hand submits that no indulgence be shown and this court may not curtail the sentence and fine as imposed by the courts below. He, however, submits that in the event this court is inclined to reduce the sentence already undergone by the applicant, which is about one month, on condition that the applicant is willing to compensate the victim by paying a sum of Rs. Five thousand, in that case the applicant be directed to execute a bond of good

behaviour and to undertake that he will not engage himself in the similar offence for a period of three years and during such period if he commits any similar offence or any cognizable offence, the sentence as imposed by the courts below should automatically stand revived.

5. Having considered the rival submissions and having regard to the fact that the applicant is the only earning member of his family and he has already undergone imprisonment for a term of one month, interest of justice will be met on accepting the offer made by the applicant that he will compensate the victim by paying an amount of Rs. 5000/- unconditionally and also execute the bond to maintain good behaviour for a period of three years and that he shall not indulge in any similar offence or any cognizable offence, in default the sentence imposed by the courts below will automatically stand revived irrespective of the payment of Rs. 5000/- already made to the victim. Accordingly, the application is disposed of on the following term :-

i) The sentence imposed by the courts below is modified by requiring the Applicant to undergo

simple improsonment for a period of one month upon payment of Rs. Five thousand to the victim as per the undertaking given before this court.

ii) The Applicant be set at liberty on payment of Rs. Five thousand and on executing a bond, stating that he shall keep good behaviour for a period of three years and shall not commit any similar offence or shall not indulge in any cognizable offence during the said period of three years. Indefault, the punishment of simple imprisonment for six months as imposed by the courts below to stand revived.

6. The above order is passed in the peculiar facts and circumstances of the case, on the assurance given on behalf of the applicant in the above terms.

7. The amount of Rs.Five thousand be deposited in the trial court with liberty to the complainant to withdraw the same. The trial court as well investigating officer to inform the victim about the deposit made by the applicant in the trial court.

8. Ordered accordingly.

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